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Office of the Secretary
Federal Communications Commission
Washington, DC 20554

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97-182

RE: Request for Comments
47 CFR Part 1 [FCC 97-296]

Dear Sir/Madame:

We are writing in opposition to the proposed rule making entitled *Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities*. This proposed FCC rule will limit or even negate any authority that the Federal Aviation Administration (FAA), Indiana Department of Transportation - Aeronautics Section, and our local zoning boards will have over transmission towers. It is critical to the safety of our airport facility that there be "checks and balances" to assure that no new obstructions to our airports are developed. By accelerating the review process, unsafe decisions could be made by the FCC, which would mean a loss of utility at our airport.

As the operator of an airport, we are very concerned that this proposed rule will severely limit our ability and the powers of the agencies that we work with to protect our airport from the encroachment of tall towers.

We oppose the proposed rule as it is now written. Airports nationwide have spent years in securing legislation at the state and local levels to assure control of airspace around airports. To attempt to negate these safety rules in the name of increased television service is the height of folly.

Recognizing that new technology is requiring the installation of new transmission facilities, we encourage you to find ways to allow the installation of these towers in harmony with the airport facilities that are also critical to our nation's economic health. Giving the FCC preemptive power over state and local zoning would place

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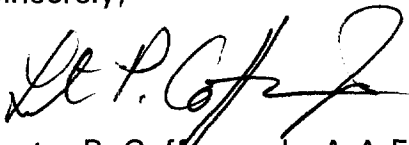
Office of the Secretary
Federal Communications Commission
Washington, DC 20554
October 21, 1997
Page 2 of 2.

**RE: Request for Comments
47 CFR Part 1 [FCC 97-296]**

the interests of DTV implementation ahead of the interests of public safety at the nation's aviation facilities.

Thank you for considering these views as you evaluate this proposed rule.

Sincerely,



Lester P. Coffman, Jr. A.A.E.
Executive Director of Airports
Fort Wayne-Allen County Airport Authority

cc: Senator Dan Coats
Senator Richard Lugar
Representative Mark Souder
INDOT - Maria Muia
AAAE
ACI-NA
Fort Wayne-Allen County Airport Authority Board Members
Indiana State Senator Thomas Wyss
Indiana Representative Jeffrey Espich
Mayor Paul Helmke, City of Fort Wayne
Allen County Commissioner Edwin Rousseau
Allen County Commissioner Jack McComb
Allen County Commissioner Linda Bloom

factual determination applicable only to the area in question, based on preexisting facts. Under these circumstances, the administrative requirements discussed above might not apply. However, EPA is taking this approach under consideration, it is not today proposing this approach.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Ozone, Wilderness areas.

Dated: August 25, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97-23236 Filed 8-29-97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 97-296]

Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission issues this Notice of Proposed Rule Making to consider whether and in what circumstances to preempt certain state and local zoning and land use ordinances which present an obstacle to the rapid implementation of digital television ("DTV") service. Having found that the accelerated roll-out is essential to the success of over-the-air DTV, the Commission set out an accelerated construction schedule for DTV facilities. To the extent that state and local restrictions stand as an obstacle to the achievement of its purposes the Commission has the authority to preempt state or local law. In this Notice of Proposed Rule Making, the Commission seeks comment on whether and in what circumstances it should preempt state or local action or inaction that interferes with the rapid roll-out of DTV.

DATES: Comments are due on or before October 30, 1997 and reply comments are due on or before December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Keith Larson, Assistant Bureau Chief for Engineering or Susanna Zwerling, Policy and Rules Division, Mass Media Bureau (202) 418-2140.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of

Proposed Rule Making, FCC 97-296 adopted August 18, 1997 and released August 19, 1997. The full text of this Commission Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW, Washington, DC. The complete text of this Notice may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Notice

I. Introduction

1. The Commission is undertaking this rule making to consider whether and in what circumstances to preempt certain state and local zoning and land use ordinances that present obstacles to the rapid implementation of DTV. Such ordinances may inhibit the resiting of antennas made necessary by the implementation of DTV. This issue was brought before the Commission in a "Petition for Further Notice of Proposed Rule Making" filed jointly by the National Association of Broadcasters and the Association for Maximum Service Television ("Petitioners").¹

II. Background

2. In its *Fifth Report and Order* in the DTV proceeding, the Commission adopted an accelerated schedule for construction of DTV transmission facilities. The construction schedule requires affiliates of the top four networks to be on the air with digital signals by May 1, 1999 in the top ten markets and by November 1, 1999 in markets 11-30. All other commercial stations must construct their DTV facilities by May 1, 2002, and noncommercial stations by May 1, 2003. Subject to biennial review and statutory exceptions, all stations are to return their analog spectrum by 2006.²

3. The accelerated DTV transition schedule will require extensive tower modification and construction. Petitioners state that local regulation presents obstacles to this construction schedule in that the levels of review

required in the administration of such restrictions can last several months.

4. To facilitate compliance with the DTV construction schedule, Petitioners ask the Commission to adopt a rule allowing the Commission to preempt state and local zoning and other land use regulations to the extent they unreasonably delay the DTV roll-out and other ongoing broadcast transmission facilities construction. The proposed rule provides specific time limits for state and local government action in response to requests for approval of the placement, construction or modification of broadcast transmission facilities. The Petitioners' proposed rule would require action within 21 days with respect to modifications of existing broadcast transmission facilities where no change in location or height is proposed; within 30 days with respect to the relocation of an existing broadcast transmission facility from a currently approved location to another location within 300 feet, or the consolidation of two or more broadcast transmission facilities, or the increase in the height of an existing tower; and within 45 days for all other requests. Failure to act within these time limits would cause the request to be deemed granted. The Petitioners propose that a broadcaster receiving an adverse decision could, within 30 days of the decision, petition the Commission for a declaratory ruling on which the Commission, in turn, would have 30 days in which to act. The Petitioners' proposed rule would remove from local consideration (1) regulations based on the environmental or health effects of radio frequency ("RF") emissions; and (2) interference with other telecommunications signals and consumer electronics devices to the extent that the facility complies with Commission regulations. It would also remove from local consideration regulations concerning tower marking and lighting provided that the facility complies with applicable Commission or Federal Aviation Administration regulations. The Petitioners' proposed rule would preempt all state and local regulations that impair the ability of licensed broadcasters to construct or modify their facilities unless the state or local authority can demonstrate that the regulation is related to health or safety objectives.

III. Discussion

5. In its *Fifth Report and Order* the Commission set out the rationale for an accelerated roll-out of DTV. The Commission found that first, absent a speedy roll-out, other DTV services might achieve levels of penetration that

¹ This petition was filed in the Commission's Digital Television proceeding *Fifth Report and Order* in MM Docket No. 87-268, FCC 97-116 (April 22, 1997) (*Fifth Report and Order*), 62 FR 26966 (May 16, 1997). The Commission will, however, treat the Petition as one filed pursuant to 47 CFR 1.401 seeking the institution of a new rule making proceeding.

² *Fifth Report and Order*, *supra* at ¶¶ 99, 100. See Also Balanced Budget Act of 1997 ("BBA"), Pub. L. 105-33, 111 Stat. 251 (1997) (codified at 47 U.S.C. 309(j)(14) (A)-(B)) (establishing statutory target date for return of the analog spectrum and setting out exceptions to that deadline).

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broadcast tower siting issues, including delays and related matters encountered by broadcasters, tower owners and local government officials. The Commission is particularly interested in receiving information about experiences related to time constraints, delays or other obstacles encountered by broadcasters and tower owners in the top 30 markets.¹⁵ The Commission is also interested in the extent to which commenters believe such difficulties are representative of difficulties that will be faced in the context of DTV build-out and whether existing laws, ordinances and procedures are likely to impede adherence to our accelerated DTV build-out schedule. The Commission also seeks comment on whether it should preempt state and local restrictions regarding RF emissions from broadcast transmission facilities or local regulation intended for aesthetic purposes?

12. The Commission also seeks comment on the procedural framework proposed by Petitioners. Specifically, should the Commission preempt state and local government authority where they fail to act within certain time periods? The Commission asks states and localities to comment on their current procedures, their need to use these procedures, the possibility of using expedited procedures to meet the DTV construction schedule, and the nature of such expedited procedures. Is there an appropriate role for the Commission in resolving disputes between localities and licensees with respect to tower siting issues?

List of Subjects in 47 CFR Part 1

Television broadcasting, Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97-23190 Filed 8-29-97; 8:45 am]

BILLING CODE 6712-01-P

¹⁵ The top thirty television markets, as ranked by Nielsen Media Research as of April 3, 1997 are: New York, Los Angeles, Chicago, Philadelphia, San Francisco, Boston, Washington, D.C., Dallas-Fort Worth, Detroit, Atlanta, Houston, Seattle-Tacoma, Cleveland, Minneapolis-St. Paul, Tampa-St. Petersburg, Miami, Phoenix, Denver, Pittsburgh, Sacramento-Stockton, St. Louis, Orlando-Daytona Beach, Baltimore, Portland, OR, Indianapolis, San Diego, Hartford-New Haven, Charlotte, Raleigh-Durham, and Cincinnati.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 92-257; DA 97-1806]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On August 21, 1997, the Public Safety and Private Wireless Division adopted an order extending the comment and reply comment period in PR Docket No. 92-257. The extension was requested to allow interested parties more time to evaluate the issues and develop an industry consensus. The comment period is extended from August 25, 1997 to September 15, 1997, and the reply comment period is extended from September 9, 1997 to September 30, 1997.

DATES: Comments are to be filed on or before September 15, 1997, and reply comments on or before September 30, 1997.

ADDRESSES: Federal Communications Commission, 1919 M St., N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Scot Stone, Wireless Telecommunications Bureau, Public Safety & Private Wireless Division, (202) 418-0680 or via E-mail to "sstone@fcc.gov".

SUPPLEMENTARY INFORMATION:

Adopted: August 21, 1997.

Released: August 21, 1997.

1. On August 15, 1997, Ross Engineering (Ross) requested that the time for filing comments in response to the *Second Further Notice of Proposed Rule Making (Second Further NPRM)* in the above-captioned proceeding released by the Commission on June 26, 1997,¹ be extended from August 25, 1997, to September 15, 1997, and that the time for filing reply comments be

¹ Amendment of the Commission's Rules Concerning Maritime Communications, *Second Further Notice of Proposed Rule Making*, PR Docket No. 92-257, FCC 97-217 (released June 26, 1996) (*Second Further NPRM*); see Maritime Communications, 62 FR 37533 (July 14, 1997).

extended from September 9, 1997 to October 16, 1997.

2. Ross states that it needs additional time to submit comments in order to fully address the substantial issues raised in the *Second Further NPRM*, consider the impact of a related Petition for Rulemaking filed by the United States Coast Guard,² and complete the work of coordinating and developing an industry consensus on these issues. Ross also states that Mobile Marine Radio, MARITEL, and the Coast Guard concur in its request for an extension of time.

3. The Commission does not routinely grant extensions of time. In this instance, however, it is desirable that the record be as complete as possible and that it include the views of as large a cross section of the maritime radio community as possible. This interest must be balanced, however, against the fact that the filing and process freeze enacted to allow the development of new rules for maritime services expires on March 17, 1998, and the Commission's intent to adopt final rules before the freeze expires.³ We believe an extension of twenty-one (21) days to be adequate to give the maritime community sufficient time to respond to the above-captioned proceeding. We therefore extend the period of time for filing comments to and including September 15, 1997, and we extend the period for filing reply comments to and including September 30, 1997.

4. *It Is Hereby Ordered* that pursuant to § 1.46 of the Commission's Rules, 47 CFR § 1.46, Ross's request to extend the deadline for filing comments and reply comments in this proceeding is granted in part to the extent indicated herein, and otherwise denied.

Federal Communications Commission.

Lisa M. Higginbotham,

Acting Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 97-23191 Filed 8-29-97; 8:45 am]

BILLING CODE 6712-01-P

² United States Coast Guard Petition for Rulemaking to Amend Part 80 of the FCC Rules to Designate Maritime Channels and Allow Operation of Automatic Identification Systems and Related Safety Systems (filed August 4, 1997).

³ *Second Further NPRM* at ¶132.

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